IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No. 203 of 2003

Date of decision: 10.10.2007

Shamsher Chand and another **..Petitioners**

Versus

Sanjiv Pandit and others **..Respondents**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1] No

For the Petitioners: **Mr. Bhupender Gupta, Senior Advocate, with Neeraj Gupta, Advocate**

For the Respondents: Mr.. Satyan Vaidya, Advocate

Deepak Gupta, J. (Oral)

This revision petition is directed against the judgment of the Appellate Authority, Shimla in Civil Miswcellaneous Appeal No 41-S/14 of 2002, decided on 24.4.2003 whereby he has rejected the appeal filed by the petitioners (hereinafter referred to as landlords) and confirmed the order passed by the learned Rent Controller, Shimla.

The landlords are owners of one shop in the ground floor/basement of a building known as

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

Shakuntalam, Lower Bazar, Shimla. This shop was rented out by the landlords in favour of the tenants at a monthly rental of Rs.4,500/- per month besides 1/4th share of Municipal taxes vide agreement dated 3rd January, 1996. The landlords filed an eviction petition before the Rent Controller on the ground that the respondents have not paid the rent from Ist October, 1988 and also on the ground that the premises in question are bonafide required by the petitioners for their own use and occupation. The learned Rent Controller held that the tenants were in arrears of rent w.e.f. 1.11.1998 till the date of order at the rate of 4,500/- besides 1/4th share of Municipal Corporation taxes. However, the petition on the ground of bonafide requirement was rejected on the ground that no such ground was available to the landlords in the case of non residential building. In appeal, one of the grounds taken was that the landlords were entitled to 10% statutory enhancement of rent which has not been ordered by the Rent Controller. The Appellate Authority has rejected the appeal, hence the present revision petition.

I have heard Mr. Bhupender Gupta, learned Senior Advocate, appearing on behalf of the landlords

and Mr. Satyan Vaidya, Advocate, appearing on behalf of the respondents.

The first contention of the landlords is that the landlords are entitled to evict the tenant on the ground of bonafide requirement even from non residential premises. The H.P. Urban Rent Control Act clearly provides that the grounds of eviction a of tenant on the ground that the premises are required bonafide by the landlords is only applicable in respect of residential premises. The relevant portion of Section 14(3) reads thus:-

> "14 (1) x x x x x x x x x x x x x x x x x
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> (2) x x x x x x x x x x x x x x x x x
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> (3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession-
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> (a) in case of residential building, if –
>
> (i) he requires it for his own occupation:
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> Provided that he is not occupying another residential building owned by him, in the urban area concerned:
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> Provided further that he has not vacated such a building without sufficient cause within five years of the filing of the application, in the said urban area."
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> (emphasis supplied)

A perusal of this provision clearly shows that this provision only applies to residential premises and not to non residential premises. It can be invoked only in the case of residential building and has no application in respect of non residential building. This question is no longer res integra. The Apex Court in **Shabir Ahmad Vs. Sham Lal and another AIR 2002 SCC 1036** held as follows:-

> "A plain reading of the provision S.13(3) (a) (i) (a) shows that a landlord is enabled to apply to the Rent Controller for an order directing the tenant to put the landlord in possession in case of a residential building if he requires it for his own occupation. It is manifest that the aforementioned provision can be invoked only in case of a residential building."

The provisions of the East Punjab Urban Rent Control Act are virtually identical to the corresponding provisions of the H.P. Urban Rent Control Act.

The next point urged is that the Rent Controller and the Appellate Authority have not granted the statutory enhancement in rent which was available to the landlords in terms of Section 5 of the Act. Section 5 of the Act provides that the landlord is entitled to increase of rent at the rate of 10% of the fair rent or agreed rent

after every 5 years. It would be pertinent to mention that in the present case, as pointed above, the tenancy was created on 3.1.1996. The petition was instituted on 16.11.1999 much prior to the completion of 5 years. No basis has been made out in the petition for grant of statutory increase. The landlords in their petition have never claimed that they are entitled to statutory increase. Therefore, this question had not been raised before the Rent Controller. The lower Appellate Court has rightly rejected this plea which was not even raised before the Rent Controller.

In view of the above discussion, there is no merit in this revision petition which is accordingly dismissed. It is, however, up to the landlords to claim statutory increase in rent in any other proceedings and the mere fact that statutory increase has not been granted in this case will not disentitle them to claim such statutory increase in other proceedings, if otherwise available to them under law. No order as to costs.

October 10, 2007(K) (Deepak Gupta), J.